IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.22 OF 2006

Nilesh Dedhia, Managing Partner of M/s.Evershine Industries .. Petitioner

Versus

M/s.Transweigh (India) Ltd. .. Respondent

Mr.K.S.Kallappura for petitioner
Mr.Rajesh Shah with S.R.Sawant for respondent

CORAM : S.C.DHARMADHIKARI, J

DATE : 8th June 2006.

P.C.

. Heard learned Advocate appearing for petitioner and Mr.Shah appearing for respondent company.

2. Perused the petition, annexures thereto as also affidavit in reply and rejoinder.

3. For the powder coating services which were rendered by petitioner, invoices were raised and according to petitioner, on 31st March 2004, balance outstanding of Rs.5,46,306.75 was confirmed by respondent company.

4. However, instead of making payment of this confirmed amount, a communication was addressed on 25th April 2005 by respondent company, confirming only a sum of Rs.1,70,801.04 as outstanding on 31st March 2005.

5. Grievance of petitioner is that this amount was not accepted by it as balance and petitioner stood by its earlier figure. However, despite company receiving statutory notice, the amount claimed is not paid.

6. Mr.Shah, learned Counsel for respondent, on the other hand invites my attention to the

affidavit in reply and points out that the company petition is essentially for recovery of certain sums at the foot of account and the remedy is to proceed in civil court. The company has from time to time pointed out that the bills which are made subject matter of the petition were never made subject matter of recovery. For the first time certain statements are made in the petition about alleged outstanding. The balance has never been confirmed. This is a matter where the books of both sides will have to reconciled and petitioner will have to establish its claim. However, as per the books of respondent company, a sum of Rs.1,70,801.04 is payable and the balance is disputed for the reasons stated in the affidavit in reply.

7. In my view, there is substance in the contention of learned Counsel for the company. However, the company itself confirms a balance as early as on 31st March 2005, but despite notice

it does not discharge that liability. In these circumstances, it will be fair, just and proper, if the following order is passed:-

8. On the company depositing in this Court a sum of Rs.2 lakhs within a period of six weeks from today, liberty is granted to petitioner to file a suit for recovery of the amounts under the invoices. Such suit is to be filed within two weeks from the date of intimation of deposit. It would, then, be for the civil court to go into the rival contentions and to pass appropriate orders on merits and in accordance with law. The amount deposited shall stand transferred to the credit of the suit. All contentions of both sides on merits are expressly kept open. Needless to state that any default in making deposit shall result in this petition being admitted and, thereafter, the office to take appropriate steps for its advertisement.

(S.C.Dharmadhikari, J)